

ADVISORY OPINION 91-22 [1991-14]

The Ethics Commission has reviewed your request for an advisory opinion dated September 23, 1991. You have provided the Commission with the following facts: You work part-time for the County as a nurse. At the time you became a County employee, you continued employment as a nurse for a local hospital (hospital).¹ In July 1991, the County entered into a contract with the hospital to provide services to the County performing the functions of the program that you work for in the County. As a result, you will be performing essentially the same duties as a County employee and, though not simultaneously, as an employee of the hospital.

You have orally informed Commission staff that the Commission could discuss this request with your Department Head.

Section 19A-12(a) of the Montgomery County Public Ethics Law provides that a public employee “must not engage in any other employment unless the employment is approved by the Commission.”² Section 19A-12(b) provides that a public employee must not be employed by an entity that contracts with the County agency with which the employee is affiliated unless the Ethics Commission grants a waiver. Finally, Section 11B-52 provides that an entity must not simultaneously employ a County employee and contract with the County.

Under these circumstances, the Commission finds that your employment relationship with the hospital violates the ethics law.

If you decide to apply for outside employment approval and a waiver to work for the hospital, it would be necessary for the Commission to waive the prohibition set out in Section 19A-12(b).

Your request should address one or more of the following criteria which the Commission must find under Section 19A-8(b) before a waiver of 19A-12(b) may be granted:

- “(1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.” (Emphasis added)

In addition, in order for you to continue your employment with the hospital, it would be necessary for the Commission to waive the prohibition set out in Section 11B-

¹ The Commission has no record of your having obtained approval from the Ethics Commission for your employment with the hospital.

² Unless otherwise indicated, section references are to the Montgomery County Code (1984).

52. Your request should address all of the following criteria which the Commission must find under Section 19A-8(a) before a waiver of 11B-52 may be granted:

- “(1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.” (Emphasis added)

In this latter regard, the Commission would be most interested in your Department Head's position on this matter.

The Commission trusts that you will find this opinion responsive to your inquiry. If you have questions regarding this matter, please do not hesitate to contact the Commission.

Date of Issue: 10/15/91